

Message Text

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ACTION EA-09

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FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 6512

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E.O. 11652: N/A

TAGS: EINV, MY

SUBJECT: PROGRESS ON INDUSTRIAL COORDINATION ACT NEGOTIATIONS

REF: KUALA LUMPUR 1354

1. SUMMARY: FOLLOWING MINISTER OF TRADE AND INDUSTRY'S MARCH 7 MEETING WITH PRIVATE SECTOR REPRESENTATIVE, OUTLINES OF INDUSTRIAL COORDINATION ACT (ICA) MODIFICATIONS BECOMING CLEARER. MOST IMPORTANT CHANGES WILL BE THAT MINISTRY OF TRADE AND INDUSTRY (MTI) WILL BROADEN DEFINITION OF PRODUCTS TO MAKE IT EASIER FOR MANUFACTURERS TO SWITCH PRODUCTION FROM ONE PRODUCT TO ANOTHER AND WILL PERMIT THE SETTING UP OF AN APPEALS BOARD THROUGH MECHANISM OF DEPUTY PRIME MINISTER'S CABINET COMMITTEE ON INVESTMENT. SOME IMPORTANT QUESTIONS RELATING TO TREATMENT OF BUMIPUTRA INVOLVEMENT HAVE NOT YET BEEN RESOLVED BUT HAVE BEEN REFERRED TO CABINET INVESTMENT COMMITTEE FOR CONSIDERATION. OLD GUARD SPOKESMAN KHIR JOHARI HAS COME OUT SOLIDLY ON SIDE OF PRIVATE SECTOR IN DISPUTE WITH GOM OVER ICA. MOST SIGNIFICANT DEVELOPMENT IN ALL THIS IS THAT APPEALS COMMITTEE WILL BE FORMED AND THAT MTI'S WORKING LEVEL, BASED ON RECENT EXPERIENCE BY IMPORTANT U.S. COMPANY, IS BEGINNING TO IMPLEMENT ICA WITH LONG PROMISED FLEXIBILITY. END SUMMARY.

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2. PRIVATE SECTOR REPRESENTATIVES MET WITH DATUK HAMZAH BIN ABU SAMAH, MINISTER OF TRADE AND INDUSTRY, ON MARCH 7 TO FURTHER DISCUSS PROVISIONS OF INDUSTRIAL COORDINATION ACT (ICA) WHICH GOM WOULD LIKE TO AMEND IN MARCH SESSION OF PARLIAMENT. BASED ON SKETCHY PRESS REPORTS AND INFO FROM PRIVATE SECTOR SOURCES, OUTLINES OF AGREED CHANGES ARE BECOMING SOMEWHAT

CLEARER, ALTHOUGH DISAGREEMENT PERSISTS IN SEVERAL CRUCIAL AREAS. GOM WILL LOOSEN REQUIREMENT THAT EACH PRODUCT A FIRM MANUFACTURES MUST BE PRECISELY IDENTIFIED; NOW FIRMS WILL ONLY BE REQUIRED TO IDENTIFY BROAD PRODUCT GROUPS (THIS IS WELCOMED BY MANUFACTURERS AS SIGNIFICANT LIBERALIZATION OF ONE OF MOST BURDENSOME OF TECHNICAL ICA REQUIREMENTS). IMPORTS OF NEW MACHINERY WILL NOT REQUIRE MINISTRY OF TRADE AND INDUSTRY (MTI) APPROVAL, ALTHOUGH IMPORTS OF USED MACHINERY WILL BE SUBJECT TO APPROVAL. MTI WILL NOT APPROVE PRICE CHANGES NOR REQUIRE THAT FIXED AMOUNT OF PRODUCTION BE EXPORTED. MTI'S INTENTION (REPORTED REFTTEL) TO CHANGE EXEMPTION BASIS TO M\$500,000 OR LESS OF FIXED INVESTMENT WILL STAND DESPITE PRIVATE SECTOR MISGIVINGS.

3. MOST IMPORTANTLY, FROM PRIVATE SECTOR STANDPOINT, IS MINISTER HAMZAH'S RELUCTANT AGREEMENT THAT AN APPEALS MECHANISM WILL NOW BE SET UP. THIS PARTICULAR REQUEST STUCK IN MINISTER'S THROAT AS HE SAW IT AS REFLECTION ON HIS PARTIALITY. A SOURCE VERY CLOSE TO DEPUTY PRIME MINISTER MAHATHIR HAS INFORMED EMBASSY THAT HAMZAH HAS BEEN OVERRULED ON THIS ISSUE AND THAT CABINET COMMITTEE ON INVESTMENT (CHAIRMANED BY DR. MAHATHIR AND CONSISTING OF HAMZAH AND FINANCE MINISTER RAZALEIGH) WILL HEAR PRIVATE SECTOR APPEALS OVER LICENSING QUESTIONS. HAMZAH HAS BEEN ABLE TO SET ASIDE OTHER SUGGESTIONS FOR AN INDUSTRIAL ADVISORS PANEL WHOSE MEMBERS WOULD BE DRAWN FROM PRIVATE SECTOR TO ADVISE HIM ON ICA IMPLEMENTATION.

4. SEVERAL IMPORTANT ISSUES HAVE NOT YET BEEN RESOLVED.
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AMONG THEM ARE THE QUESTION OF EQUITY PARTICIPATION FOR BUMIPUTRAS; HOW PARTNERSHIPS ARE TO BE HANDLED AND DEGREE TO WHICH FIRMS WILL BE FORCED TO USE BUMIPUTRA DISTRIBUTORS AT EXPENSE OF EXISTING DISTRIBUTION NETWORKS. ALL OF THESE ISSUES HAVE BEEN REFERRED TO DR. MAHATHIR'S INVESTMENT COMMITTEE FOR RESOLUTION.

5. IN RELATED DEVELOPMENT OF PARTICULAR INTEREST IN VIEW OF OLD GUARD-DR. MAHATHIR FEUD, KHIR JOHARI (FORMER MALAYSIAN AMBASSADOR TO U.S., FORMER MTI MINISTER AND CHARTER MEMBER OF OLD GUARD) IN COLUMN IN HIS DAILY NEWSPAPER, "WATAN", TOOK GOM TO TASK FOR ITS HANDLING OF ICA IN PARTICULAR AND INVESTMENT CLIMATE IN GENERAL. HE ENDORSED VIRTUALLY ALL POINTS RAISED BY PRIVATE SECTOR DURING NEGOTIATIONS AND STRONGLY URGED COMPROMISE. HE CATEGORIZED DATUK HAMZAH AS "A REASONABLE MAN".

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6. COMMENT: THE MOST SIGNIFICANT DEVELOPMENT IN THE RECENT SERIES OF NEGOTIATIONS IS THAT DATUK HAMZAH'S EASILY BRUISED AMOUR PROPRE SEEMS TO HAVE BEEN MOLLIFIED (OR OVERRIDDEN) TO THE EXTENT THAT HE HAS PUBLICLY GIVEN HIS RELUCTANT BLESSINGS TO THE CREATION OF AN APPEALS MECHANISM, AN ISSUE CONSIDERED AS CRUCIAL BY PRIVATE SECTOR REPRESENTATIVES. THIS WILL GO FAR TOWARDS SATISFYING PRIVATE INVESTORS, ESPECIALLY MALAYSIAN CHINESE, ABOUT THEIR FUTURE UNDER THE ICA. WHILE THE FINAL OUTCOME OF THE ACT IS NOT YET REVEALED, ITS OUTLINES ARE BECOMING CLEARER. IN THIS CONNECTION, HEWLETT-PACKARD CORPORATION'S (HP) EXPERIENCE IS REVEALING. THEY RECENTLY HAD OFF-THE-RECORD MEETING WITH MTI'S INDUSTRY DIVISION (WHICH HAS IMPLEMENTATION AUTHORITY FOR LICENSES) IN WHICH HP REP EXPLAINED COMPANY'S NEED FOR 100 PERCENT FOREIGN OWNERSHIP, NOT ONLY FOR THEIR EXISTING INVESTMENT IN PENANG, BUT FOR ANY FUTURE EXPANSION (SUPPOSEDLY NOT ALLOWED UNDER NEW ECONOMIC POLICY AND ICA). HP REP INFORMED THAT MTI HAD INDEED APPROVED SUCH EQUITY PROVISIONS FOR THREE MULTINATIONALS RECENTLY; WAS ADVISED HOW TO GO ABOUT APPLYING FOR AN EXEMPTION, AND WAS GIVEN STRONG INDICATIONS THAT EXEMPTION FOR HP WOULD BE GRANTED. THIS IS FIRST EVIDENCE AVAILABLE TO EMBASSY THAT MINISTER'S OFT-PROMISED FLEXIBILITY IS INDEED BEING IMPLEMENTED AT WORKING LEVEL. WHILE DIALOGUE OVER FINAL SHAPE OF ICA WILL CONTINUE FOR AWHILE, IT NOW APPEARS

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INCREASINGLY LIKELY THAT ACT WILL EMERGE IN FINAL FORM
THAT PRIVATE SECTOR CAN LIVE WITH, HOWEVER UNENTHUSIASTICALLY.

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Message Attributes

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